

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:98-cr-081

- vs -

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

KEITH DEWITT, SR.,

Defendant.

:

REPORT AND RECOMMENDATIONS

This case is before the Court on Defendant's First Step Act Motion (ECF No. 538), made on his behalf by Assistant Federal Public Defender Kevin Schad. By agreement of the District Judges resident at the Dayton location of court, all First Step Act proceedings are referred to the undersigned under General Order Day 13-01.

The Motion was filed and served March 27, 2019. *Id.* at PageID 2663. Under S. D. Ohio Civ. R. 7.2, the United States had until April 17, 2019, to oppose the Motion, but it has not done so. Under S. D. Ohio Civ. R. 7.2(a)(2), failure to file a memorandum in opposition may result in the granting of that motion.

The Motion demonstrates that Dewitt is eligible for re-sentencing under the First Step Act because he is a "defendant who, prior to August 3, 2010, was convicted of an offense for which the Fair Sentencing Act would have reduced the statutory penalties." While the Motion argues for

what that reduced sentence should be, the matter of appropriate felony sentencing is outside the scope of the referral and no recommendation is made on that point.

It is respectfully recommended that the Court find Dewitt eligible for re-sentencing under the First Step Act and set this case for re-sentencing once the District Judge has considered, if he so desires, an updated Presentence Investigation Report from the United States Probation Office.

May 3, 2109.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).